

Manoj Kumar and Others Vs. State

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Court : Delhi

Decided On : Sep-17-2013

Judge : Indermeet Kaur

Appellant : Manoj Kumar and Others

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Judgment:17.9.2013 + CRL.A. 1367/2011 MANOJ KUMAR AND OTHERS Appellants Through: Mr.Sanjay Suri, Rishabh Relan and Mr. Dinesh Malik, Advocates versus STATE Respondent Through: Ms. Richa Kapoor, APP for the State. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J (oral) 1 On the intervening night of 28-29.06.2007 at about midnight in a gali opposite Raj STD, Dhirpur village, Delhi the four appellants before this Court namely Manoj, Mahender, Ravinder (presently lodged in judicial custody) and Ritu (since released on bail) in furtherance of their common intention had committed the murder of deceased Manish @ Guddu. Version of the prosecution was unfolded in the testimony of the eye-witness Rakhi (PW-11). The role attributed to appellant Manoj was that he had caused stab injuries to the deceased while he was caught hold of by Mahender and Ravinder; Rakhi had exhorted the co-accused to kill the deceased. 2 There were two interrelated incidents. First incident relates to 11:30 PM of the same day. Bijender (PW-6), the elder brother of the deceased was riding back on his motor-

cycle when on his way he was accosted by Manoj, Mahender and Ravinder; his motor-cycle was snatched by Manoj; PW-6 returned home and made a complaint to his family members; his family members which included his parents Shakuntla Devi (PW-2), Chunni Lal (PW-3), his uncle Heera Lal (PW-4) and his sister Rakhi (PW-11) marched towards the house of the accused; on the way, the accused persons started pelting stones upon the complainant party. At that point of time, the deceased tried to take away the motor-cycle of his brother when he was caught hold of by Mahender and Ravinder; Ritu exhorted the others to kill the deceased; repeated stab injuries were given by Manoj upon Manish. 3 Manish was removed to the hospital; he was brought in a brought dead condition; this was evident from his MLC (Ex.PW33/A). Post-mortem was conducted upon the deceased. The following four injuries were noted upon his person:1.Stab wound of size 4 cm x1 cm x Chest Cavity Deep, Transversely placed over the right side chest wall on the right sternum and second right inter costal space, 8 cm below the medial end of right clavicle, 7 cm medial to and above the right nipple, 134 cm above the heel of the right foot. Margins of the wound were clean cut and the medial end of the wound was acute and lateral angle was wide. Direction of the wound was from above downwards and before backwards. 2.Stab wound of size 3 cm x 1 cm x chest cavity deep, transversely placed over the sternum adjacent to external injury number 1 and the right end of the wound unites with the left end of external injury no.1. The wound was placed about 6 cm below the suprasternal notch and 7 cm above the xyphi sternum and 134 cm above the heel of right foot. The margins of the wound were clean cut with left end with an acute angle. The direction of the wound was from above downwards and before backwards.

3. Stab wound of size 4 cm x 1.3 cm x chest cavity deep, obliquely placed over the anterior aspect of the right shoulder joint, just above the right anterior axillary fold, 16 cm above from the supra sternum notch and 141 cm above the heel of the right foot. Margins of the wound were clear cut with medial end with an acute angle. Direction of the wound was from lateral to medial and from above downwards and backwards.

4. Incised wound of size 4 cm x 1 cm superficial and placed over the lateral aspect of the right knee joint, 50 cm above the heel of the right foot. 4 The cause of death

was opined as haemorrhage shock consequent to combined effect of all the aforementioned injuries. All the injuries were ante-mortem and recent. 5 The accused persons were charge-sheeted for having committed the offence under Section 302/120-B of the IPC; they were however acquitted of the charges under Section 120-B of the IPC; they have been convicted under Section 302 read with Section 34 of the IPC. 6 The prosecution had examined 34 witnesses. Per-contra the defence had produced two witnesses. 7 On behalf of the appellants, learned counsel for the appellants points out that even excepting the case of the prosecution as depicted by it; it does not make out a case of a planned or a premeditated murder; even as per the version of the prosecution, the fight was over the issue of a motor-cycle which Manoj had allegedly snatched from PW-6. It was the complainant party who had been offensive and was marching towards the house of the accused when as per the further version of the prosecution they were attacked with stones; submission being that had it been a case of a planned murder, it would have been the accused persons who would have been on the offensive and they would have gone to the house of the complainant and not vice-versa. Further submission being that even as per the case of the prosecution the initial weapon of offence was only stones; thereafter stab injuries were caused upon the victim which was in the heat of the moment; weapon of offence was a kitchen knife; the families were both well known to each other and living in the same vicinity; at best the offence under Section 304-I of the IPC is made out. 8 These submissions have been refuted by the learned public prosecutor. Attention has been drawn to the post-mortem report. It is pointed out that the nature of injuries depicted in the post-mortem report do not substantiate the submission of the appellants and do not permit their case to fall under Exception IV of Section 300 of the IPC as has been vehemently argued by the learned counsel for the appellants. The injuries were even otherwise caused on vital parts of the body which is evident from injuries No.1 & 2. 9 Perusal of the record evidences the motive in the version of PW-6. The motive as per the version of the prosecution was the fact that accused Manoj had snatched the motor-cycle of PW-6 which had annoyed him and his family members who had thereupon gone towards the house of the accused persons to accost them of this incident. As relevantly pointed out by the learned counsel for the appellants, it was the complainant party who was on

the offensive; they had gone to the house of the accused. The complainant party was un-armed. However it is also not the case of the prosecution that the accused persons were armed; the incident had started by the accused persons pelting stones upon the complainant party. 10 Record shows that it was not only the deceased who had been injured but the accused Manoj had also received injuries and so also his sister-in-law Lokesh (examined as DW-2). This version is fortified by the medical record. The MLC of the deceased shows that he was examined in the hospital at 01:30 AM. He was brought to the hospital in a brought dead condition; his pulse was not recordable. This was at the Bara Hindu Rao Hospital. The MLC of the Manoj was also conducted on the same day at the same hospital i.e. 02:45 AM i.e. after about one hour. The following five injuries were noted upon his person:

1. CLW on scalp approx. 6 cm x 0.5 cm x 0.5 cm 2. Multiple linear abrasions over chest wall and abdomen. 3. CLW on right lower chest approx. 1.5cm x 0.5cm x 0.25 cm.

4. swelling and tenderness with bruising - right leg.

5. Abrasion on left shoulder approx 2cm x 1 cm. 11 The first injury is a CLW on the scalp approximately 6 cm x 0.5 cm x 0.5cm. 12 DW-2 was also medically examined at the same time. The injuries noted upon her person are swelling with an abrasion over the dorsomedial aspect of the left forearm; injuries were opined to be simple. These injuries have not been satisfactorily explained by the prosecution. 13 The medical record reflects and in fact substantiates the submission of the learned counsel for the appellants that it had become a free fight; both the parties were warring against one another. The issue was but trivial; it was over the issue of motor-cycle of PW-6. 14 The medical evidence which is the post-mortem report of the victim evidences that four injuries were inflicted upon his body. The first two injuries are on the right side of the chest; they are deep injuries and in fact were the fatal injuries. However they were both on the right side of the chest; both appear to have been inflicted in quick succession one after the other in a heat of passion. The third injury is on the right shoulder and the fourth injury is superficial. In the aforementioned circumstances, it cannot be said that the

accused persons had come with a plan or a premeditation to commit the murder of the victim. 15 Section 300 of the IPC reads as under:

300. Murder- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

1. There are four exceptions contained in this provision of law. The fourth exception has been relied upon by the learned counsel for the appellant. Exception IV to Section 300 reads herein as under:

Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault.

17 This Exception is based on the proposition that where an offence has been committed without any premeditation in a sudden fight in the heat of passion and the offender had not acted in a cruel or unusual manner, the accused is entitled to seek protection under the said provision of law. It is unfortunate that a life has been lost but all cases are not simpliciter of murder; they can also be case of culpable homicide not amounting to murder. The line of distinction between the two offences is thin but nevertheless it is distinct. 18 The weapon of offence can be described as nothing but a kitchen knife. The seizure memo has been perused. The length of the blade is 15.5cm. 19 The accused persons are three brothers and one sister of the same family; admittedly they have no criminal antecedents or any other criminal background. Both the parties i.e. the family of the accused and the family of the complainant are living in the same vicinity. The dispute was over the issue of the motorcycle. The deceased appears to have been killed in a heat of passion by Manoj which had resulted in his unfortunate death. 20 In AIR 200.SC 241.Krishna Tiwary and Anr Vs. State of Bihar where the accused had inflicted knife blows in the heat of passion without any premeditation and without any intention that he would cause that injury, his case was covered within Exception 4 to Section 300 of the IPC; he had been convicted under Section 304-I of the IPC.

21 Applying the test laid down in this case, there is no reason as to why the appellants should also not be accorded the benefit of Explanation 4 of Section 300 of the IPC. The conviction of the appellants for the offence of murder is accordingly modified for the offence of culpable homicide not amounting to murder. They are all accordingly convicted under Section 304-I of the IPC. 22 Appellants Manoj, Mahender and Ravinder are stated to have been in judicial custody. Their nominal roll suggests that they have suffered incarceration for about seven years. The fourth appellant i.e. Ritu who is a lady aged 32 years (present in Court today) is unmarried; submission has been made on her behalf that she did not marry because of this case which is pending for the last six years (the incident relates back to the year 2007). 23 In the fitness of things, appellant Manoj, Mahender and Ravinder are sentenced to undergo RI for eight years and to pay a fine of Rs.5,000/- each and in default of payment of fine to further undergo SI for six months. The fourth appellant i.e. Ritu has suffered incarceration for about four years and three months and vide order dated 20.12.2011 her sentence had been suspended and she had been admitted to bail. Keeping in view the aforementioned facts, the appellant Ritu is sentenced to the period already undergone by her. Her bail bond is cancelled; surety is discharged. 24 Appeal is disposed of in the above terms. Copy of the order be sent to Jail Superintendent for information and necessary compliance. INDERMEET KAUR, J KAILASH GAMBHIR, J SEPTEMBER17, 2013/a